

ALD-111

January 25, 2008\

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

C.A. No. **07-4692**

DENNIS SHIPMAN

VS.

STATE OF DELAWARE, ET AL.

(D. DEL. CIV. NO. 07-CV-00687)

Present: SLOVITER, FISHER AND HARDIMAN, CIRCUIT JUDGES.

Submitted are:

- (1) By the Clerk for possible dismissal due to a jurisdictional defect;
- (2) By the Clerk for possible summary action under 3rd Cir. LAR 27.4 and Chapter 10.6 of the Court's Internal Operating Procedures; and
- (3) Appellant's response

in the above-captioned case.

Respectfully,

Clerk

MMW/MCF/ch

ORDER

The foregoing appeal is dismissed because the Court lacks jurisdiction to review the District Court's order at this time. Under 28 U.S.C. § 1291, this Court generally has jurisdiction only over decisions of the district courts which "end[] the litigation on its merits and leave[] nothing for the court to do but execute the judgment." Stringfellow v. Concerned Neighbors in Action, 480 U.S. 370, 375 (1987) (citation omitted). The District Court's November 21, 2007 order did not rule on the merits of any of appellant's

claims and did not end the litigation. The order is not presently appealable under 28 U.S.C. § 1292(a)(1) because it does not grant or deny any of the substantive relief sought in appellant's complaint or constitute a ruling on the merits of any of his substantive claims. See, e.g., Robinson v. Lehman, 771 F.2d 772, 782 (3d Cir. 1985) (an order denying a motion for a TRO is not appealable if it does not effectively decide the merits or is not the equivalent to the dismissal of a claim); In re Pressman-Gutman Co., 459 F.3d 383, 392 (3d Cir. 2006) (holding that this Court lacked jurisdiction of an appeal under § 1292(a)(1) where "the district court has not granted or denied all or part of the substantive relief sought by any party in this action"); Rodgers v. United States Steel Corp., 541 F.2d 365, 373 (3d Cir. 1976) ("An order incidental to a pending action that does not grant all or part of the ultimate injunctive relief sought by the claimant, that is unrelated to the substantive issues in the action and that merely continues the case is not appealable under section 1292(a)(1).").

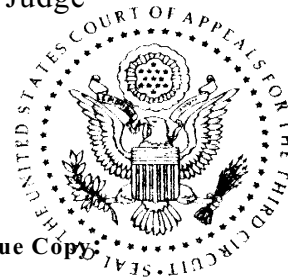
By the Court,

/s/ Dolores K. Sloviter

Circuit Judge

Dated: January 30, 2008

CH/cc: Mr. Dennis Shipman
Judy O. Hodas, Esq.



Marcia M. Waldron

Marcia M. Waldron, Clerk

OFFICE OF THE CLERK

MARCIA M. WALDRON

CLERK

UNITED STATES COURT OF APPEALS

FOR THE THIRD CIRCUIT

21400 UNITED STATES COURTHOUSE

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Clerk of District Court
(District of Delaware)

Date **January 30, 2008**

Shipman vs. State of Delaware, et al

(Caption)

Appeal No. **07-4692**

Dennis Shipman

(Appellant)

07-cv-00687

(DC Docket No.)

Enclosures:

January 30, 2008 Certified copy of C. of A. Order filed by the Court.

_____ Copy of this form to acknowledge receipt and return to C. of A.

Carolyn Hicks **(267)-299-4926**

Deputy Clerk Telephone Number

Receipt Acknowledge:

(Name)

(Date)